BALASINGHAM v. PUBLIC PROSECUTOR

[A.Cr.J. (Ismail Khan J.) July 4, 1959]
[K.L. — Criminal Appeal No. 15 of 1959]

Criminal Law and Procedure — Trial — Duty of Trial Court to give reasoned judgment — Appeal — Criminal Procedure Code (Cap. 6), s.308 — Interested witness entitled to credence. Evidence — Bad character — Evidence of — Not referred to in judgment.

An appeal is merely a continuation of proceedings by way of rehearing and litigants as well as the Appellate Court are entitled to know the reasons for the finding. The trial Court is under a statutory duty under section 308 of the Criminal Procedure Code (Cap. 6) to transmit to the Appellate Court the grounds of decision which convey a reasoned judgment on the facts and the law not merely the conclusion arrived at. The absence of reasons indicates the possibility that such vital consideration as the weight of evidence and the probabilities of the case may not have influenced the mental process of the trial Judge in arriving at the ultimate finding.

There is no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances.

Evidence that the appellant "caused trouble to others" is evidence that he is a person likely to have committed the offence, and is irrelevant and inadmissible and though not referred to in the judgment might have influenced the decision.

Cases referred to:—

(1) *Murugiah v. Public Prosecutor* [1941] M.L.J. 17.

(2) *Public Prosecutor v. Low Toh Seng* [1941] M.L.J. 1.

CRIMINAL APPEAL.

David Marshall for the appellant.

Harun bin Haji Idris (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: In this case the appellant was charged as follows:—

"That you on November 8, 1958 at about 12.50 p.m. at No. 31 Sultan Street, Kuala Lumpur, in the State of Selangor being a public servant, to wit, a Municipal Officer inspecting Deaths, did accept for yourself a valuable thing, to wit, $5 cash without consideration from Wong Yong, a person whom you knew to be concerned in business transaction by yourself, to wit, the business of issuing a death certificate in respect of the late Chew Kew Chai, and that you have thereby committed an offence punishable under section 165 of the Penal Code."

The appellant was convicted of the offence charged and sentenced to pay a fine of $500 in default three months' imprisonment. Against the conviction he has appealed. In his grounds of judgment the learned President says that the following "facts were proved and not denied."

"(a) On November 6, 1958 a Chinese woman rubber tapper (P.W.2) of Sungei Choh brought her 29 days old sick baby to the General Hospital, Kuala Lumpur but the baby died before reaching the hospital.

(b) She took the dead body to the death house at No. 31 Sultan Street, Kuala Lumpur on that day.

(c) She then made arrangements with an employee of the undertaker, Wong Yong (P.W.3) to have this child buried for $45. She then returned to Sungei Choh.

(d) On November 7, 1958 defendant, a public vaccinator and Inspector of dead bodies came to No. 31 Sultan Street in the course of his normal duties. He refused to examine the dead body of the child as the parents were not present and the birth certificate of the child was not produced. He refused to give the burial certificate.

(e) In the afternoon of November 7, 1958 Wong Yong reported to the police (P.W.1). As a result of his report the police lay a trap for the defendant. A $5 note (P2) was marked on the morning of November 8, 1958.

(f) Defendant came to the death house on November 8, 1958. There he met the dead child's mother who still could not produce the birth certificate of the child as it was in the possession of the estate manager.

(g) Nevertheless the defendant finally gave the burial certificate but without filling in the child's name. (P4A). At a given signal the police closed on the defendant and escorted him to the police station. There in the presence of two Senior Police Officers (P.W.1 and P.W.5) defendant was asked to bring out everything in his possession. Amongst the articles brought out by the defendant was the marked $5 note (P2).

According to Wong Yong defendant at first asked for $20 on November 7, 1958 but finally accepted $5 on November 8, 1958. Defendant denied asking for money or receiving $5 from Wong Yong. He suggested that Wong Yong put the $5 note in his shirt pocket while he was sitting down and writing out P4A."

With regard to the learned President's statement of facts it is to be observed that in his evidence the appellant did not admit that "he refused to examine the body of the child as the parents were not present *and* the birth certificate was not produced." All he asked for was the parents of the child *or* its birth certificate or both.

The learned President accepted P.W. 3 Wong Yong's evidence and rejected that of the defendant and convicted him. The main grounds of appeal may be set out under three heads:

(1) That the learned President gave no reasons why he accepted Wong Yong's evidence and why he rejected the defendant's.

(2) That the President misdirected himself as to the burden of proof, particularly the burden of proof upon the defence.

(3) The proceedings have been vitiated by the admission of inadmissible evidence.

I shall deal with the first and second grounds of appeal together. It would have been of great advantage to me if I could have had the reasons for the learned President's finding as without them it is difficult to say whether or not the reasons are adequate, nor would it be possible to assess the considerations, if any, given

to the particular fact or facts proved or disproved. It now remains for me to analyse the evidence in some detail so as to arrive at some conclusion whether the learned President was justified in summarily rejecting the evidence of the appellant.

According to P.W. 1 and P.W. 3 a signal was to be given as soon as the money was handed to the appellant. There are discrepancies between P.W.3 and P.W.1 (Inspector Chong) and P.W.4 (Detective Cheah Loo Kong) as to where the signal was given. P.W.3 said the money was handed over in 31 Sultan Street and the signal given outside the said shop. According to P.W.1 and P.W.4 the signal was given at the 5 ft. way of 21 Sultan Street which was several doors away. P.W. 3 said he followed appellant to No. 21 Sultan Street where appellant wrote the Death Certificate, and he made this significant admission that at 21 Sultan Street he was standing to the left of the appellant about 2 feet away and that he could reach the appellant's pocket with his hand. The appellant's defence is that P.W.3 could have put the money in his pocket without his being aware of it while he was writing the death certificate. He denied he had asked for and accepted a bribe. He said P.W.3 Wong, the undertaker wanted him to issue a death certificate without proper identification, but that he (appellant) had insisted on seeing the parents of the child or its birth certificate. It was only after P.W.3 had brought the mother of the child to him that he examined the body and issued the death certificate. The omission of the child's name from the death certificate was because the birth certificate was not produced and the mother could not spell the name.

There was therefore a direct conflict of evidence and a serious defence cannot be summarily dismissed as an improbable story without adequate reasons for such a conclusion "I accepted Wong Yong's version and rejected that of the defendant" may still leave the question open whether the burden of "introducing evidence" so as to raise a reasonable doubt has been discharged. The latter expression "I rejected the evidence of the defendant" is, I consider, capable of different constructions; that the accused had not proved his innocence and/or that he had not by his explanation or the sum of the evidence raised a reasonable doubt in the mind of the learned President as to his guilt or that his explanation though not believed cannot be reasonably true. In any case I think it is a most unsatisfactory and cavalier way of dealing with highly controversial facts. In addition such a laconic expression is far from helpful to the Appellate Court guided only by the printed evidence to ascertain whether the conviction is against the weight of the evidence. But here I find substantial reasons for interference. An appeal is merely a continuation of proceedings by way of rehearing and litigants as well as the Appellate Court are entitled to know the reasons for the finding.

The trial Court is under a statutory obligation under section 308 of the Criminal Procedure Code to transmit to the Appellate Court the grounds of decision which convey to my mind a reasoned judgment on the facts and the law not merely the conclusion arrived at. The advantage of a "speaking" judgment needs no emphasis. In fact in *Murugiah v. Public Prosecutor* [1] and *Public Prosecutor v. Low Toh Seng* [2] both Horne J. and Terrell Ag. C.J. felt that the absence of reasons indicates the possibility that such vital consideration as the weight of evidence and the possibilities of the case may not have influenced the mental process of the trial Judge in arriving at the ultimate finding. After all there is no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances.

I propose to deal very briefly with the last ground of appeal. P.W.1 Inspector Chong said in his evidence: "Wong told me that there was no need to give the $20. He said $5 would be sufficient which was the usual amount." Now this statement of P.W. 3 is one made in the course of investigation and its admission is clearly in contravention of section 113 of the Criminal Procedure Code. There is another serious illegality. P.W. 3 was allowed to give evidence that appellant "caused trouble to others." This is evidence that appellant is a person likely to have committed the offence and is clearly irrelevant and inadmissible. It is true that the learned President does not refer to such evidence in his judgment but the possibility that it might have influenced his decision cannot be excluded.

I consider it unfair to the appellant having regard to the unsatisfactory nature of the prosecution evidence to put him to the peril of a retrial. Accordingly I allow the appeal. The conviction is quashed and the sentence set aside. The fine, if paid, must be refunded.

Appeal allowed.

Solicitors: *Marshall & Smith.*